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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

RAMPURIA, SHARAD K

ART UNIT PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 2617



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/749656

Filing Date: December 28, 2000

Appellant(s): Fabrice DELLA MEA

Ruthleen E. Uy (Reg. No. 51,361)
For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed 05/15/2006 appealing from the Office action mailed 02/23/2006.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-22 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

US 5991642	Watanabe et al.	11-23-1999
US 6349197	Oestreich	02-19-2002
US 2003/0195011	Mayer	10-16-2003

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 9, 13-14, 19 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. [US 5991642] (hereinafter Watanabe) in view of Oestreich [US 6349197] (hereinafter Oestreich).

As per claims 1, 13, 19 and 22, Watanabe teaches:

A method of establishing a mode for a mobile station to mobile station and cell to cell call in a cellular mobile telephone system. (Col.4; 35-47 and Col.8; 41-53)

Watanabe does not specifically teach a step of selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell. However, Oestreich teaches in an analogous art, that method includes a step of selecting a common coding mode (Col.2; 47-57) for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell. (Col.4; 36-44) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a step of selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell in order to provide the variable transmission conditions with respect to the speech coding/decoding method.

Watanabe does not specifically teach a tandem free operation mode. However, the applicant of present application (Della Mea) admitted in Background section of the invention “establishing TFO mode generally...each mobile...concerned”. (Pg.1; 0011) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a tandem free operation mode in order to optimize the quality of service.

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Additionally, Watanabe does not specifically teach a tandem free operation mode.

However, Oestreich teaches in an analogous art, that a method of establishing the tandem free operation mode for a mobile station to mobile station (TFO; Col.2; 47-57 and Col.4; 36-44)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a method of establishing the tandem free operation mode for a mobile station to mobile station in order to provide the variable transmission conditions with respect to the speech coding/decoding method.

As per claim 9, Watanabe teaches all the particulars of the claim except system is GSM.

However, Oestreich teaches in an analogous art, that A method according to claim 1, wherein said system is GSM. (GSM; Col.3; 66-Col.4; 5)

As per claim 14, Watanabe teaches all the particulars of the claim except a transcoder of each mobile station. However, Oestreich teaches in an analogous art, that A method according to claim 1, wherein a common coding mode is selected for a transcoder of each mobile station. (Col.4; 61-67)

Claims 10-12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe and Oestreich further in view of Mayer [US 2003/0195011] (hereinafter Mayer).

As per claims 10-12, the above combination teaches all the particulars of the claim except half-rate/full-rate mode. However, Mayer teaches in an analogous art, that a method according to

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claim 1, wherein one of said coding modes consuming the most resources is half-rate/full-rate mode. (pg.1; 0007) Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include half-rate/full-rate mode in order to provide a method of transmitting data in GSM system.

(11) *Response to Argument*

Applicant's arguments filed on 5/15/2006 have been fully considered but they are not persuasive.

I. In rejoinder to appellant's argument (On page 10, second paragraph of Appeal Brief) that Oestreich doesn't teach, "selecting a common coding mode for each mobile station and the selection of a common coding mode takes account of the traffic load in at least one cell." it is noted that Oestreich supports the assertion as, the switchover/selecting from broadband to narrowband by the bottleneck method which also support the accountability of traffic in radio resource allocation as further Oestreich included an additional, or respectively, alternative functionality of the control means SE consists in the detection of interruptions in the TFO transmission, or of **bottlenecks in the allocation of radio resources**, or in the transmission, which are conditioned by handover processes. The transmission possibilities are also limited by these influences. If a changeover is necessary in a half-rate mode, then a narrowband speech coding method SSCV **should likewise be selected**. (Please perceive col.4; lines 36-44) and that

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can be easily interpreted on the claimed limitations. Hence, it is believed that *Oestreich still teaches the claimed limitations.*

In response to appellant's argument (On page 10, third paragraph of Appeal Brief) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Oestreich teaches a method of the switchover from broadband to narrowband to inventively expand to a greater bandwidth at the receiver side (See Col.2; 29-57).

The motivation of combining Oestreich with Watanabe is to optimize the greater speech-coding scheme (See Col.2; 29-57 of Oestreich), which is in the same field of endeavor as Watanabe.

Therefore, one skill in the art would recognize the combination of the above references is proper.

Consequently, the incorporation of Oestreich with Watanabe still teaches the precincts of claim.

II. Regarding claims 10-12, appellant's argument (On page 12 of Appeal Brief) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be

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established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The combining of Oestreich with Watanabe further with Mayer recited operation of the present invention, as explained above in claim 1 (please see preceding response to arguments).

Therefore the combining of Oestreich with Watanabe further with Mayer show novel features that are noted in the invention of claim 1.

Conclusion

For the above reasons, the Examiner respectfully submits that a prima facie case of obviousness of the claimed invention has been set forth in the Final Office action and appellant(s) has/have failed to overcome the prima/facie case of obviousness. Accordingly, it is believed that the Final rejection under 35 U.S.C. 103 is proper and the Board of Patent Appeals and Interferences is therefore respectfully urged to sustain the Examiner's rejection.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




Sharad Rampuria


20 July 2006

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Conferees,


GEORGE ENG
SUPERVISORY PATENT EXAMINER

George Eng


WILLIAM TROST
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

William Trost